IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9392 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE **Sd/-**
HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOKBHAI NAVNITLAL JAISWAL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR MB FAROOQUI for Petitioner(s) : 1,
MR UDAY BHATT, Ld. AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 12/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. The petitioner is a partner of Alankar Chitra Mandir, a registered partnership firm, which runs

Alankar Theatre. The petitioner has been aggrieved by the order dated 27.11.1997 passed by respondent No.1, whereby the petitioner has been directed to pay Rs. 22,575/-. Rs. 17,575/- is the amount of entertainment tax under the provisions of Section 9(1) of the Gujarat Entertainment Tax Act, 1977 (hereinafter referred to as “the Act” for short) and a sum of Rs. 5,000/- is by way of penalty under the provisions of Section 9(3) of the Act.

2. The circumstances in which the impugned order had been passed are as under:-

3. On 14th July, 1996, the officers of the respondent had paid a surprise visit to the theatre managed by the petitioner and had found that three spectators were having tickets of 11th July, 1996. Thus, the said spectators were not having valid tickets and it was thought that, possibly, the said tickets were duplicate and with an intention to avoid payment of tax, duplicate tickets were issued by the petitioner. In the circumstances, a show cause notice was given to the petitioner and, after considering the reply of the petitioner, by order dated 21st September, 1996, respondent No.2 had come to the conclusion that the said tickets, which had been issued and used on 11th July, 1996, had been reused by the spectators. Respondent No.2 also found that the tickets were not duplicate but the spectators

had re-used the tickets because of slackness on the part of the cinema authorities and the spectators could manage to enter the cinema hall without having proper tickets. In the circumstances, by the order dated 21.9.1996, a sum of Rs. 449.40 ps. was made payable by the petitioner by way of entertainment tax and penalty of Rs. 449.40 ps. was imposed upon the petitioner. Thus, in all, the petitioner was called upon to pay Rs. 898.80 ps. by way of tax and penalty. The said amount had been paid by the petitioner to the respondent authorities on 29th October, 1996.

4. The said order dated 21.9.1996 passed by respondent No.2 was taken into revision by respondent No.1. Upon taking the said order in revision, a show cause notice was issued to the petitioner. The show cause notice had been replied to and, in the reply, the petitioner had submitted that the petitioner had no *malafide* intention of avoiding tax, but the spectators, who were found with old tickets, had managed to enter the cinema hall without knowledge of the petitioner firm or its employees. After considering the reply given to the show cause notice and after hearing the representative of the petitioner, the revisional authority passed an order dated 27.11.1997, whereby it directed the petitioner to pay entertainment tax Rs. 17,575/- under Section 9(1) of the Act and

penalty Rs. 5,000/- under the provisions of Section 9(3) of the Act.

5. The revisional authority imposed the afore-stated penalty and charged tax on the hypothesis that as the said three spectators had entered auditorium without proper tickets on that day, possibly, for the whole year, in all the three shows, three persons must have entered the auditorium without proper tickets. Thus, the revisional authority calculated the amount of tax on the basis that three shows were exhibited on every day and in every show, there were three spectators without having proper tickets. Thus, the revisional authority had arrived at the aforesaid figure.

6. It is pertinent to note that, though the revisional authority came to the afore-stated conclusion, it also believed the case of the petitioner that, only on account some slackness on the part of the petitioner, the said spectators had entered the auditorium with the tickets, which had been issued earlier. The said fact is clearly reflected when the revisional authority observed that there was no intention of the petitioner to avoid payment of tax, but only on account of carelessness on the part of the petitioner or the persons, in charge of the auditorium, some spectators had entered the auditorium and had seen

the cinema by using the old tickets.

7. The afore-stated facts clearly reveal that the revisional authority had come to the conclusion that there was no dishonest intention on the part of the petitioner to avoid payment of tax. At the most, there was some negligence on the part of the petitioner or his employees, which has resulted into re-use of the tickets by three spectators. It is also pertinent to note that there was no basis for the revisional authority to believe that, in each and every show, such slackness or carelessness had been shown by the petitioner or its staff.

8. If there was no intention to avoid payment of tax and if three spectators had re-used the tickets only because of some negligence on the part of the staff of the petitioner, in our opinion, no penalty could have been imposed upon the petitioner under the provisions of the Act, because as per the provisions of Section 9(3) of the Act, if the authority is satisfied that due to wilful misstatement or suppression of facts by the proprietor, the tax could not be levied or if the tax has been levied at a lower rate, then only penalty can be imposed. Thus, looking to the provisions of Section 9(3) of the Act, penalty could not have been imposed upon the petitioner.

9. It is also pertinent to note that three spectators were found with improper tickets on 14th July, 1996. On 17th June, 1996 also, the said theatre had been inspected by the officers of respondent No.1, as stated in para 11 of the petition, and at the time of the said inspection, no irregularity had been found by the concerned officers. In view of the said fact, presumption of the revisional authority that for last one year in each show, three spectators must have been witnessing cinema without proper tickets, is not found to be correct. Looking to the law laid down by this Court in the case of **Deluxe Cinema Vs. State of Gujarat** (Special Civil Application No. 9693 of 1996, decided on 16.12.1996), the respondent authorities could not have levied entertainment tax and penalty for the period prior to the date on which previous inspection had taken place, especially when no irregularity had been found at the time of the previous inspection.

10. For the afore-stated reasons, in our opinion, the order passed by the revisional authority is bad in law. It is pertinent to note that the petitioner had accepted the order passed by respondent No.2 dated 21.9.1996 and thereby had admitted the fact that there might be some carelessness on the part of the gate-keeper, who possibly did not check the

tickets properly and, therefore, three spectators had entered the theatre with old tickets.

11. We, therefore, come to the conclusion that the order dated 21.9.1996 passed by respondent No.2 is just and proper and the revisional authority had no reason to enhance the amount of tax or penalty imposed upon the petitioner.

12. Under the order dated 6.4.1998 passed by this Court, if the petitioner has deposited Rs. 1800/- with respondent No.2 in addition to the amount payable by the petitioner under order dated 21.9.1996, the said amount shall be refunded to the petitioner within one month from the date of receipt of this order by the respondents.

13. We, therefore, quash and set aside the impugned order passed by respondent No.1 dated 27.11.1997. The petition is allowed. Rule is made absolute with no order as to costs.

Sd/- Sd/-

(ANIL. R. DAVE, J.) (HARSHA DEVANI,J.)

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